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**UNITED STATES DISTRICT COURT**

**DISTRICT OF NEVADA**

KRISTINA PFAFF-HARRIS and  
FRED G. WRIGHT, individually  
and on behalf of all others similarly  
situated ,

Plaintiffs,

v.

PROGRESSIVE DIRECT  
INSURANCE COMPANY and  
PROGRESSIVE NORTHERN  
INSURANCE COMPANY, Ohio  
corporations ,

Defendants.

Case Number

**CLASS ACTION COMPLAINT**

**JURY DEMAND**

1 Plaintiffs Kristina Pfaff-Harris and Fred G. Wright (“Plaintiffs”), by and  
2 through undersigned counsel, bring this class action, individually and on behalf of  
3 all others similarly situated, against Progressive Direct Insurance Company  
4 (“Progressive Direct”) and Progressive Northern Insurance Company (“Progressive  
5 Northern”) (collectively, “Progressive” or “Defendants”) and allege as follows:  
6

### 7 INTRODUCTION

8  
9 1. This is a class action on behalf of Plaintiffs and all other similarly  
10 situated claimants in Nevada who received a payment for the loss of a totaled  
11 vehicle from Defendants, where Defendants used valuation reports prepared by  
12 Mitchell International, Inc. (“Mitchell”) to determine the actual cash value  
13 (“ACV”) of the loss vehicles. Through Mitchell’s valuation, Defendants  
14 systemically thumb the scale when calculating the ACV of claimants’ loss vehicles  
15 by applying so-called “Projected Sold Adjustments” that are: (a) arbitrary; (b)  
16 contrary to appraisal standards and methodologies; (c) not based in fact, as they are  
17 contrary to the used car industry’s market pricing and inventory management  
18 practices; (d) not applied by the major competitor of Defendants’ vendor Mitchell;  
19 and (e) on information and belief, not applied by Defendants and Mitchell to  
20 insureds in other states like California and Washington.  
21

22 2. In the event of a “total loss” to an insured vehicle—*i.e.*, where repair  
23 of the vehicle is impossible or uneconomical—Defendants’ uniform insurance  
24 policies with Plaintiffs and all putative Class members (defined below) promises  
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1 to pay for the loss, limited to the ACV of the vehicle. Attached as Exhibit A is a  
2 copy of Plaintiff Pfaff-Harris' Policy ("Policy"), which is materially identical to  
3 the policy for Plaintiff Wright's and all members of the putative Classes.  
4

5 3. When valuing total loss claims for vehicles, it is improper for an  
6 automobile insurance company, such as Progressive, to undervalue and underpay  
7 the claims by manipulating the data used to determine the ACV of the vehicles.  
8 Specifically, under their insurance policy terms and applicable Nevada law,  
9 Defendants have a duty to pay, and represent that they will pay, the ACV of a loss  
10 vehicle when adjusting total loss claims.  
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13 4. Notwithstanding these obligations and representations, Defendants  
14 fail to fulfill this obligation by taking advantage of a valuation process that employs  
15 improper and unreasonable adjustments to reduce the value of comparable vehicles  
16 specified in the valuation reports, which in turn reduces the valuation of the total  
17 loss vehicles and the corresponding claim payment.  
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20 5. Specifically, Defendants, through Mitchell, systemically apply a so-  
21 called "Projected Sold Adjustment" that results in a significant downward  
22 adjustment to the base values of the comparable vehicles used to calculate the ACV  
23 of Plaintiffs' and Class members' total loss vehicles. This reduction is contrary to  
24 appraisal standards and methodologies and is not based in fact, as it is contrary to  
25 the used car industry's market pricing and inventory management practices. The  
26 adjustment is applied to each of the comparable vehicles on top of adjustments for  
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1 differences such as mileage, options, and equipment. The only purported  
2 explanation for the downward adjustment appears on the last page of the valuation  
3 reports and is a general, nondescript statement claiming that the reduction is to  
4 “reflect consumer purchasing behavior (negotiating a different price than the listed  
5 price).” Exhibit B at p. 6; Exhibit C at p. 9.  
6

7  
8 6. Neither Progressive nor Mitchell has ever conducted any study or  
9 research to determine whether such “consumer purchasing behavior” exists and  
10 impacts ACV in the modern used-car market. Worse than this complete lack of  
11 curiosity is that Defendants thumb the scale by discarding vast amounts of relevant  
12 data that contradict applying a Projected Sold Adjustment. For example, until July  
13 2021, Defendants, through their vendors, simply threw out all data where the list  
14 price equaled or exceeded the sold price. And to this day, they persists in excluding  
15 from Projected Sold calculations some data where the list price equaled sold price  
16 and all data where the sold price exceeds the list price, even though examples  
17 abound of dealerships that charge more than advertised price to customers  
18 purchasing a vehicle with cash—i.e. not providing the dealer the opportunity to  
19 profit through financing the sale or acquiring a trade-in—which is particularly  
20 relevant to the inquiry of determining a vehicle’s ACV. Defendants fail to control  
21 for whether the vehicle was purchased with cash, or whether there were ancillary  
22 purchases or transactions that may influence the “sales price” but not the ACV (e.g.,  
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1 whether the customer traded in a vehicle at time of purchase, bought an extended  
2 warranty or service plan, or financed the purchase).

3         7.         Nevertheless, Progressive applies a Projected Sold Adjustment to the  
4 advertised (or listed) price of comparable vehicles when calculating the ACV of  
5 total-loss vehicles. For Plaintiff Pfaff-Harris, the Projected Sold Adjustment was  
6 approximately 14.9% of each of the four comparable vehicle's value prior to  
7 adjustments. For Plaintiff Wright, the Projected Sold Adjustment was  
8 approximately 5.1% of each of the three comparable vehicle's value prior to  
9 adjustments. To arrive at the Projected Sold Adjustment amount, however,  
10 Progressive, through third-party vendors, and as set forth above, categorically  
11 excludes transactions that undermine its flawed thesis: for example, transactions  
12 where the sold price exceeds list price, transactions from dealerships who market  
13 themselves as "no-haggle" dealerships, and every transaction where the sold price  
14 equaled the advertised price.

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19         8.         As explained herein, the used auto market is such that, given the  
20 ubiquity of Internet advertising and shopping and developments in sophisticated  
21 pricing software, car dealerships simply do not negotiate off of Internet-advertised  
22 prices. Any difference between a list and sales price does not reflect a negotiation  
23 of the vehicle's cash value, but rather that a dealer shifted its profits to other  
24 components of the transaction: for example, profits made through financing or  
25 trade-in or ancillary products described above, or that the dealer applied a generally  
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1 unavailable discount to the cash value of the vehicle (such as employee discount,  
2 loyalty discount, military discount, or friends/family discount). But Progressive  
3 ignores these market realities and is content with paying insureds and claimants  
4 below-market prices for their totaled vehicles.  
5

6 9. To arrive at its conclusion that consumers negotiate down the  
7 advertised price, Progressive, through their vendors, intentionally distorts the data,  
8 excludes transactions that undercut its false hypothesis, and ignores market  
9 realities, all for the purpose of applying a capricious and unjustified Projected Sold  
10 Adjustment to artificially deflate the value of total loss vehicles.  
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13 10. This pattern and practice of undervaluing comparable and total loss  
14 vehicles when paying automobile total loss claims through arbitrary, unsupported,  
15 and unjustified adjustments, which benefits the insurer at the expense of the  
16 insured, violates Defendants' policies with its insureds.  
17

## 18 **PARTIES**

19  
20 11. Plaintiff Kristina Pfaff-Harris, at all relevant times, is and was a  
21 Nevada citizen. At all relevant times, Plaintiff Pfaff-Harris was contracted with  
22 Progressive Direct for automobile insurance. On or about February 22, 2019,  
23 Plaintiff Pfaff-Harris was in a car wreck and Defendants deemed her vehicle to be a  
24 total loss.  
25

26 12. Plaintiff Fred G Wright, at all relevant times, is and was a Nevada  
27 citizen. At all relevant times, Plaintiff Wright was contracted with Progressive  
28

1 Northern for automobile insurance. On or about August 8, 2020, Plaintiff Wright's  
2 vehicle was in a car wreck and Defendants deemed his vehicle to be a total loss

3 13. Defendant Progressive Direct Insurance Company is an Ohio  
4 company with its principal place of business in Ohio. Defendant Progressive Direct  
5 is a subsidiary of Progressive Group entities. Defendant Progressive Direct provides  
6 insurance coverage throughout the United States for first-party property damage  
7 under collision and/or comprehensive coverage. At all relevant times, Defendant  
8 Progressive Direct conducted business in Nevada through insurance agents and other  
9 company personnel.  
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13 14. Defendant Progressive Northern Insurance Company is an Ohio  
14 company with its principal place of business in Ohio. Defendant Progressive  
15 Northern is a subsidiary of Progressive Group entities. Defendant Progressive  
16 Northern provides insurance coverage throughout the United States for first-party  
17 property damage under collision and/or comprehensive coverage. At all relevant  
18 times, Defendant Progressive Northern conducted business in Nevada through  
19 insurance agents and other company personnel.  
20  
21

## 22 JURISDICTION AND VENUE

23 15. Minimal diversity exists under the Class Action Fairness Act  
24 ("CAFA"), 28 U.S.C. §§ 1332(d), 1441(a)-(b), and 1453. Plaintiffs and the proposed  
25 class members are citizens of the State of Nevada. Defendants are Ohio Corporations  
26 that have their corporate headquarters in Ohio, and, at all relevant times hereto,  
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1 Defendants were engaged in the business of marketing and selling insurance policies  
2 and adjusting insurance claims in the State of Nevada.

3 16. Plaintiffs estimate that there are more than 100 putative class  
4 members, and the aggregate compensatory damages (in the amount of the Projected  
5 Sold Adjustment that were deceptively deducted), claimed by Plaintiffs and the  
6 Classes are estimated in good faith to exceed \$5,000,000.00.  
7

8 17. Venue is proper in this District under 28 U.S.C. § 1391, as a  
9 substantial portion of the conduct giving rise to Plaintiffs' claims occurred in this  
10 District, and Defendants transact business in this District.  
11

## 12 **FACTUAL ALLEGATIONS**

### 13 **Defendant's Systemic Application of Projected Sold Adjustments**

14 18. On February 22, 2019, Plaintiff Pfaff-Harris was involved in a car  
15 wreck and sustained physical damage to her vehicle. At the time of the car wreck,  
16 Plaintiff Pfaff-Harris was contracted with Progressive Direct.  
17

18 19. On August 8, 2020, Plaintiff Wright was involved in a car wreck and  
19 sustained physical damage to his vehicle. At the time of the car wreck, Plaintiff  
20 Wright was contracted with Progressive Northern.  
21

22 20. Like all members of the putative Class, Plaintiffs made property  
23 damage claims to Defendants.  
24

25 21. Pursuant to uniform policies and procedures, Defendants declared  
26 Plaintiffs' vehicles to be total losses and purported to pay them the ACV of their  
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1 loss vehicles, as Defendants promised and represented they would under the  
2 uniform provisions of their insurance policies and Nevada law.

3       22. When calculating its valuations and claims payments, Defendants  
4 systemically employ a routine “total loss settlement process.” This process involves  
5 obtaining a “Vehicle Valuation Report” from Mitchell and relying upon the  
6 valuation provided by Mitchell as the ACV amount owed under the policy.  
7 Defendants provided a Mitchell Vehicle Valuation Report for Plaintiff Pfaff-Harris  
8 on February 22, 2019. *See* Exhibit B. Defendants provided a Mitchell Vehicle  
9 Valuation Report for Plaintiff Wright on August 20, 2020. *See* Exhibit C.

10       23. The Mitchell Vehicle Valuation Reports used by Defendants during  
11 the relevant period followed the same process, provided and disclosed the same or  
12 substantially the same material information, and presented that material  
13 information in the same or substantially the same format. These valuation reports  
14 purport to contain values for comparable vehicles for sale in the claimant’s  
15 geographic area. The reports also contain a purported valuation of the loss vehicle  
16 based upon these prices for comparable vehicles listed in the report. The report then  
17 adjusts the advertised prices of those comparable vehicles to account for  
18 differences in equipment, mileage, and vehicle configuration. Exhibit B at p. 6;  
19 Exhibit C at p. 9.

20       24. In addition, however, the valuation reports used by Defendants make  
21 a further adjustment to each loss vehicle called a “Projected Sold Adjustment.” For  
22

1 Plaintiff Pfaff-Harris, Projected Sold Adjustments in the amounts of -\$521.00, -  
2 \$492.00, -\$327.00, and -\$373.00 respectively, were applied to each of the four  
3 comparable vehicles. Exhibit B at p. 4-6. For Plaintiff Wright, Projected Sold  
4 Adjustments in the amounts of -\$912.00, -\$927.00, and -\$8577.00 respectively,  
5 were applied to each of the three comparable vehicles. Exhibit C at p. 7-8.  
6

7  
8 25. Defendants provide no data specific to the comparable vehicles or  
9 any explanation of industry practices in its valuation reports to support *any*  
10 Projected Sold Adjustment, much less the specific downward adjustments used in  
11 Plaintiffs' valuation reports. Instead, the *only* explanation is buried on the last page  
12 of each report, stating in full: "Projected Sold Adjustment – an adjustment to reflect  
13 consumer purchasing behavior (negotiating a different price than the listed price)."  
14 Exhibit B at p. 6; Exhibit C at p. 9.  
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16

17 26. In truth, Defendants' Projected Sold Adjustments do not reflect  
18 market realities (the context in which "consumer behavior" occurs) and run  
19 contrary to customary automobile dealer practices and inventory management,  
20 where list prices are priced to market to reflect the intense competition in the  
21 context of Internet pricing and comparison shopping. Before the ubiquity of online  
22 advertising and shopping, "advertised" prices had very little to do with eliciting car  
23 buyers to particular dealerships—instead, car buyers generally went to their local  
24 used car dealership that had the desired vehicle in stock for sale. The "advertised"  
25 price was simply whatever price was listed on the physical window. And  
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1 consumers could not, as they can now, easily compare that price to Internet  
2 advertisements of the same vehicle offered by competitors.

3         27. As such, dealerships generally priced vehicles above market knowing  
4 that some consumers might be poor negotiators and they would realize an inflated  
5 profit on those sales. This above-market “window” price obviously allowed for  
6 negotiation, and a downward negotiation would often occur.  
7

8         28. But during the Class Period, that is simply no longer how the used car  
9 market operates. Now, given the need for Internet advertising, the prevalence of  
10 Internet shopping and consumer behavior, developments in sophisticated pricing  
11 software universally used by car dealerships, and the ease with which consumers  
12 can compare the advertised prices of identical vehicles across multiple competing  
13 dealerships, used car dealerships no longer price vehicles above market with room  
14 for—and the expectation of—negotiation. Instead, car dealerships use  
15 sophisticated pricing software—which provides the advertised prices of all  
16 competitors; the average “turn” of a given year, make and model; the amount for  
17 which vehicles have sold during a given time-period; etc.—and now appraise  
18 vehicles before acquiring them to price them to market and do not negotiate from  
19 that price.  
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25         29. This makes sense, because if a car dealership priced a vehicle above  
26 market with room for negotiation, consumers would simply not go to that  
27 dealership. This is because consumers can easily compare advertised prices and  
28

1 would seek out the vehicle priced to market, rather than the same vehicle priced at  
2 a higher amount (i.e., above market). Given the choice between paying less or  
3 paying more for an identical vehicle, consumers will choose to pay less.  
4

5 30. As such, a negotiated discount off the cash price is highly atypical and  
6 is not proper to include in determining ACV. The inclusion of this significant  
7 downward adjustment purportedly to “reflect consumer purchasing behavior” is  
8 particularly improper in the context of this action—insureds who have suffered a  
9 total loss of their vehicle and need to procure a replacement have limited time to  
10 search out the illusory opportunity to obtain the below-market deal Defendants  
11 assume always exists without any explanation or support.  
12  
13

14 31. Defendants’ Projected Sold Adjustments are contrary to appraisal  
15 standards. There are multiple generally-recognized and acceptable methodologies  
16 for determining ACV, including use of comparable vehicles. Defendants begin the  
17 process of valuing loss vehicles using comparative methodology but improperly  
18 deviates from that process by thumbing the scales against the insured. Defendants  
19 document the loss vehicle’s and each comparable vehicle’s mileage, options, and  
20 trim, which are compared in the report, and makes dollar adjustments accordingly.  
21 Plaintiffs do not challenge these documented adjustments. At this stage of the  
22 process, however, Defendants abandon the comparative methodology and apply  
23 adjustments that are contrary to proper appraisal methodologies for determining  
24 ACV. Appraisers use advertised prices and make adjustments based only on  
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1 observed and verifiable data; appraisal standards do not permit arbitrary  
2 adjustments from the advertised price based upon undocumented and unverifiable  
3 projections.  
4

5 32. Defendants thumb the scale by discarding vast amounts of relevant  
6 data that contradict any application of a Projected Sold Adjustment and by failing  
7 to control for material variables, including whether there were ancillary purchases  
8 or transactions that may influence what is recorded as the “sales price” but do not  
9 influence the ACV (e.g., whether the customer traded in a vehicle at the time of  
10 purchase, bought an extended warranty or service plan, or financed the purchase).  
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13 33. Until July 2021, Defendants excluded from the calculation of the  
14 Projected Sold Adjustment all transactions in which the list price of a vehicle  
15 equaled the sold price.  
16

17 34. Even after July 2021, Defendants still exclude some transactions in  
18 which the list price of a vehicle equals the sold price.  
19

20 35. Defendants have excluded and continue to exclude from the  
21 calculation of the Projected Sold Adjustment all transactions in which the sold price  
22 of a vehicle is greater than the list price.  
23

24 36. Without having performed any investigation or study, Defendants  
25 simply assume all such transactions are anomalies.

26 37. Likewise, Defendants have not exercised even a modicum of  
27 curiosity to investigate whether market realities support the application of a  
28

1 Projected Sold Adjustment. Nor do Defendants or their vendors attempt to verify—  
2 even a single time—for those transactions where the advertised price exceeded sold  
3 price, whether the reason for the reduction was negotiation of the cash price of the  
4 vehicle and not some other (far more likely) reason, some of which are discussed  
5 herein.  
6

7         38. Progressive’s form Policy does not permit reducing a vehicle’s value  
8 for invented or arbitrarily assumed justifications.  
9

10         39. Moreover, the accuracy of Defendants’ data is, at best, suspect, as it  
11 contains a significant number of transactions where the advertised date in the  
12 database comes after the sold date. As a matter of simple chronology, it makes no  
13 sense to advertise a vehicle after it is sold. But here, too, Defendants make no effort  
14 to control for this obvious flaw in the data.  
15  
16

17         40. These irremediable, and unjustifiable, errors skew the data in favor  
18 of Defendants to the detriment of the insureds.  
19

20         41. Moreover, examples abound demonstrating the glaring error of  
21 Defendants’ cherry-picking practices.

22         42. For example, related to the exclusion of sales prices greater than list  
23 prices, all advertised prices for comparable vehicles listed in Defendants’ valuation  
24 reports are scraped from Internet sources—specifically Cars.com, Autotrader.com,  
25 Vast.com, and TrueCar.com.  
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1           43.     The advertised prices many dealerships publish on these websites  
2 include discounts for consumers who are financing and providing a trade-in. Thus,  
3 a consumer who was not financing the vehicle through the dealership or who was  
4 not trading in a vehicle—obviously, insureds who sustained a total loss almost  
5 certainly are not trading a vehicle when purchasing a replacement vehicle—would  
6 have to pay in cash more than the price listed on sources where Mitchell scrapes  
7 advertisements for comparable vehicles. In determining the ACV of Plaintiffs’ and  
8 class members’ totaled vehicles, there is no justification for Defendants to have  
9 excluded those transactions from calculating the Projected Sold Adjustment, while  
10 only including transactions where the sold price was recorded as less than the list  
11 price.  
12

13           44.     Simply put, there is no justification for Progressive to exclude such  
14 transactions as outliers or mistakes when justifying how it calculates the amount of  
15 the so-called Projected Sold Adjustment.  
16

17           45.     Doing so serves only to skew the data to meet Defendants’  
18 unjustified, unsupported, and uninvestigated assumption that the list price of  
19 comparable vehicles should always be reduced to pay insureds less.  
20

21           46.     Defendants further fail to control whether the vehicle was purchased  
22 with discounts unavailable to the public (e.g., employee discounts).  
23

24           47.     Defendants also fail to control for whether the vehicle was purchased  
25 with cash, or whether there were ancillary purchases or transactions that may  
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1 influence the recorded “sales price” but not the ACV (e.g., whether the customer  
2 traded in a vehicle at the time of purchase, bought an extended warranty or service  
3 plan, or financed the purchase).  
4

5 48. In these instances, the ACV of the vehicle remains its price to market;  
6 the dealership simply transferred the anticipated profit through either the sale of an  
7 optional ancillary product or by reducing what it would have offered in trade-in  
8 value.  
9

10 49. The impropriety and arbitrariness of Defendants’ Projected Sold  
11 Adjustments are further demonstrated by the fact that Mitchell’s primary  
12 competitor in providing valuation reports to insurance companies—CCC  
13 Intelligent Solutions, Inc.—does not apply projected sold adjustments in this  
14 manner. Instead, CCC Intelligent Solutions uses list prices.  
15  
16

17 50. On information and belief, the impropriety and arbitrariness of  
18 Defendants’ Projected Sold Adjustments are further demonstrated by the fact that  
19 Progressive does not apply these adjustments when determining the ACV of total  
20 losses in California or Washington. There is no justification for applying these  
21 adjustments when valuing total losses in Nevada while not subjecting California  
22 and Washington insureds to the same negative adjustments.  
23  
24

25 51. Plaintiffs and each member of the proposed Classes were damaged  
26 by Defendants’ application of these Projected Sold Adjustments because they were  
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28



1 not paid the ACV they would have received had Defendants applied proper  
2 methodologies and appraisal standards.

3         52. Were it not for this deceptive and improper adjustment, the “Base  
4 Value” in each valuation report would have been higher, resulting in a higher  
5 “settlement value” and in turn a higher payment by Defendants for ACV.  
6 Specifically, for Plaintiff Pfaff-Harris, were it not for this deceptive and improper  
7 adjustment, the payment of ACV by Defendants would have been \$428.25 higher,  
8 before adding the related increase in payments for applicable sales taxes. For  
9 Plaintiff Wright, were it not for this deceptive and improper adjustment, the  
10 payment of ACV by Defendants would have been \$449.33 higher, before adding  
11 the related increase in payments for applicable sales taxes.  
12

### 13                                 CLASS ACTION ALLEGATIONS

14         53. Plaintiffs bring this action individually and as a class action under Fed.  
15 R. Civ. P 23(a) and (b), on behalf of the following proposed Classes:  
16

17         **Progressive Direct Class:** All persons who made a first-party claim on  
18 a policy of insurance issued by Progressive Direct Insurance Company  
19 to a Nevada resident where the claim was submitted from the earliest  
20 allowable time through the date an order granting class certification is  
21 entered, and Progressive Direct determined that the vehicle was a total  
22 loss and based its claim payment on a valuation report from Mitchell  
23 where a Projected Sold Adjustment was applied to at least one  
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1 comparable vehicle.

2 **Progressive Northern Class:** All persons who made a first-party claim  
3 on a policy of insurance issued by Progressive Northern Insurance  
4 Company to a Nevada resident where the claim was submitted from the  
5 earliest allowable time through the date an order granting class  
6 certification is entered, and Progressive Northern determined that the  
7 vehicle was a total loss and based its claim payment on a valuation  
8 report from Mitchell where a Projected Sold Adjustment was applied  
9 to at least one comparable vehicle.  
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13 54. Plaintiff Pfaff-Harris is the proposed class representative for the  
14 Progressive Direct Class. Plaintiff Wright is the proposed class representative for  
15 the Progressive Northern Class. Excluded from the Classes are Defendants and any  
16 of their members, affiliates, parents, subsidiaries, officers, directors, employees,  
17 successors, or assigns; governmental entities; and the Judge(s) and Court staff  
18 assigned to this case and their immediate family members.  
19  
20

21 55. Plaintiffs reserve their right to amend the Class definitions if discovery  
22 and further investigation reveal that any Classes should be expanded or narrowed,  
23 divided into additional subclasses, or modified in any other way.  
24

25 56. **Numerosity.** The members of the Classes are so numerous that  
26 individual joinder of all Class members is impracticable. While Plaintiffs are  
27 informed and believe that there are thousands of Class members, the precise number  
28

1 is unknown to Plaintiffs but may be ascertained from Defendants' books and  
2 records. Class members may be notified of the pendency of this action by recognized  
3 Court-approved notice dissemination methods, which may include U.S. Mail,  
4 electronic mail, Internet postings, and/or published notice.  
5

6       **57. Commonality and Predominance.** This action involves common  
7 questions of law and fact, which predominate over any questions affecting individual  
8 Class members, including, without limitation:  
9

10       a) Whether Defendants systemically used Mitchell's Vehicle Valuation  
11 Reports in adjusting total loss claims to determine ACV;  
12

13       b) Whether the Mitchell Vehicle Valuation Reports included Projected  
14 Sold Adjustments to the value of the comparable vehicles that reduced the base  
15 value, and thus the claim amount paid by Defendants for the ACV of Plaintiffs' and  
16 Class members' total loss vehicles;  
17

18       c) Whether Defendants' improper practices injured Plaintiffs and  
19 members of the Class;  
20

21       d) Whether Defendants' acts violated its obligations under the policy of  
22 insurance;  
23

24       e) Whether Plaintiffs and the Classes are entitled to compensatory  
25 damages, and if so, the calculation of damages; and  
26

27       f) Whether Plaintiffs and Class members are entitled to an injunction  
28 restraining Progressive's future acts and practices.

1           58.     **Typicality.** The claims of the Plaintiffs, who are the representatives  
2 of the Classes herein, are typical of the claims of the proposed Classes, in that the  
3 claims of all members of the proposed Classes, including the Plaintiffs, depend on a  
4 showing of the acts of Progressive giving rise to the right of Plaintiffs to the relief  
5 sought herein. There is no conflict between the individually named Plaintiffs and the  
6 other members of the proposed Classes with respect to this action, or with respect to  
7 the claims for relief set forth herein.  
8  
9

10           59.     **Adequacy of Representation.** Plaintiffs are adequate representatives  
11 of the Classes because Plaintiffs' interests do not conflict with the interests of the  
12 other Class members whom they seek to represent, Plaintiffs have retained counsel  
13 competent and experienced in complex class action litigation, including successfully  
14 litigating class action cases similar to this one, where insurers breached contracts  
15 with insureds. The interests of the Classes will be fairly and adequately protected by  
16 Plaintiffs and their counsel.  
17  
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19           60.     **Superiority.** A class action is superior to any other available means  
20 for the fair and efficient adjudication of this controversy, and no unusual difficulties  
21 are likely to be encountered in the management of this class action. The damages or  
22 other financial detriment suffered by Plaintiffs and the other Class members are  
23 relatively small compared to the burden and expense that would be required to  
24 individually litigate their claims against Defendants, such that it would be  
25 impracticable for the Class members to individually seek redress for Defendants'  
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1 wrongful conduct. Even if the Class members could afford litigation, the court  
2 system could not. Individualized litigation creates a potential for inconsistent or  
3 contradictory judgments and increases the delay and expense to all parties and the  
4 court system. By contrast, the class action device presents far fewer management  
5 difficulties, and provides the benefits of single adjudication, economy of scale, and  
6 comprehensive supervision by a single court.  
7

## 8 **CAUSES OF ACTION**

### 9 **COUNT I**

#### 10 **BREACH OF CONTRACT**

11 (ON BEHALF OF PLAINTIFF PFAFF-HARRIS

12 AND THE PROGRESSIVE DIRECT CLASS)

13 61. Plaintiffs hereby repeat and reallege paragraphs 1-60.

14 62. This claim is brought by Plaintiff Pfaff-Harris on behalf of the  
15 Progressive Direct Class.

16 63. Plaintiff Pfaff-Harris made a claim for property damage on her  
17 Progressive Direct insurance policy.

18 64. At the time of her claim, Plaintiff Pfaff-Harris was party to an  
19 insurance contract requiring Progressive Direct to handle, adjust, and pay insureds  
20 the ACV of their total loss claim.  
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67. As a direct result of Defendant Progressive Direct's breaches, Plaintiff Pfaff-Harris and members of the Progressive Direct Class sustained actual damages. Plaintiff Pfaff-Harris' damages are at least \$428.25 (before calculation of additional sales tax benefits), plus pre-judgment and post-judgment interest.

## BREACH OF CONTRACT

AND THE PROGRESSIVE NORTHERN CLASS)

69. This claim is brought by Plaintiff Wright on behalf of the Progressive  
ern Class.

70. Plaintiff Wright made a claim for property damage on his Progressive Northern insurance policy.

71. At the time of his claim, Plaintiff Wright was party to an insurance contract requiring Progressive Northern to handle, adjust, and pay insureds the ACV of their total loss claim.

72. At the time of his claim, and in the time since, Plaintiff Wright has performed all obligations under his policy of insurance and was entitled to the benefits he contracted for in his policy.

73. Through the use of improper and unfounded Projected Sold Adjustments in Mitchell vehicle valuation reports, as detailed above, Defendant Progressive Northern handled, adjusted, and paid Plaintiff Wright's claim, and the claims of the members of the proposed Progressive Northern Class, for less than the ACV required by the insurance contract.

74. As a direct result of Defendant Progressive Northern's breaches, Plaintiff Wright and members of the Progressive Northern Class sustained actual damages. Plaintiff Wright's damages are at least \$449.33 (before calculation of additional sales tax benefits), plus pre-judgment and post-judgment interest.

### COUNT III

## BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING

(ON BEHALF OF PLAINTIFF PFAFF-HARRIS)

AND THE PROGRESSIVE DIRECT CLASS)

75. Plaintiffs hereby repeat and reallege paragraphs 1-60.

1           76. This claim is brought by Plaintiff Pfaff-Harris on behalf of the  
2 Progressive Direct Class.

3           77. Every contract, including the Policy, contains an implied covenant of  
4 good faith and fair dealing. The purpose of this duty is to ensure that parties do not  
5 take advantage of each other in a way that could not have been contemplated at the  
6 time the contract was drafted or do anything that will destroy the other party's right  
7 to receive the benefit of the contract.  
8

9  
10          78. Disputes involving the exercise of good faith arise when one party is  
11 given broad discretion in performing its obligations under the contract. Where a  
12 contract specifically vests one of the parties with broad discretion in performing a  
13 term of the contract, the covenant of good faith and fair dealing requires that the  
14 discretion be exercised reasonably and with proper motive, not arbitrarily,  
15 capriciously, or in a manner inconsistent with the reasonable expectations of the  
16 parties.  
17

18  
19          79. To the extent the Policy provides Defendant with discretion in  
20 calculating the ACV of an insured's total-loss vehicle, Defendant exercised its  
21 discretion unreasonably and in a manner that was arbitrary, capricious, and  
22 inconsistent with the reasonable expectations of the parties, specifically, to  
23 arbitrarily reduce the amount of their total-loss payments to insureds, by (i)  
24 excluding the vast majority of data in calculating and applying the PSA merely  
25 because the data showed that the PSA was illegitimate and contrary to the actual  
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1 market reality; and (ii) making baseless assumptions that were always to the  
2 insured's detriment and its own benefit, i.e., that every vehicle sale for an amount  
3 equal to or more than list price is an outlier while every vehicle sale for an amount  
4 less than list price is because the consumer negotiated down a cash purchase price.  
5

6 80. To the extent Defendant has discretion to apply a Projected Sold  
7 Adjustment to adjust the advertised price of a vehicle for sale, Defendant did not  
8 exercise that discretion in good faith because it always, uniformly, and without  
9 exception applied the adjustment to *decrease* the listed price and never to *increase*  
10 the listed price. Defendant never, for example, applies a Projected Sold Adjustment  
11 to increase a listed price where the vehicle is listed at a below market amount.  
12 Instead, irrespective of what the listed price is and how it compares to other listed  
13 prices, Defendant uniformly applied the PSA to reduce the listed price.  
14  
15  
16

17 81. Defendant Progressive Direct breached the covenant of good faith  
18 and fair dealing by, *inter alia*:

19 a) Intentionally inventing and applying Projected Sold Adjustments to  
20 undervalue comparable vehicles, and, in turn, insureds' total-loss vehicles;  
21

22 b) Failing to conduct *any* investigation or study or research into whether  
23 the Projected Sold Adjustment (i) reflects the used auto market, (ii) is based on  
24 accurate data or extrapolations, (iii) is consistent with accepted appraisal methods  
25 and practices, or (iv) has any justification whatsoever;  
26  
27  
28

1 c) Interpreting the terms and conditions of their insurance policies in an  
2 unreasonable manner solely in an effort to understate the value of total- loss  
3 vehicles and avoid paying insureds the ACV on their total-loss claims;  
4

5 d) Inventing spurious grounds for undervaluing total loss claims that are  
6 hidden, not specific in dollar amount, not adequately explained, and unreasonable.  
7

8 82. Defendant Progressive Direct's breaches of the covenant of good  
9 faith and fair dealing have caused damages to Plaintiff Pfaff-Harris and the  
10 Progressive Direct Class. Plaintiff Pfaff-Harris' and the Progressive Direct Class  
11 members' damages include the amounts improperly deducted by Defendant  
12 Progressive Direct from its payments to insureds on the basis of a Projected Sold  
13 Adjustment.  
14

#### 15 **COUNT IV**

#### 16 **BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING**

17 (ON BEHALF OF PLAINTIFF WRIGHT

18 AND THE PROGRESSIVE NORTHERN CLASS)  
19

20 83. Plaintiffs hereby repeat and reallege paragraphs 1-60.  
21

22 84. This claim is brought by Plaintiff Wright on behalf of the Progressive  
23 Northern Class.  
24

25 85. Every contract, including the Policy, contains an implied covenant of  
26 good faith and fair dealing. The purpose of this duty is to ensure that parties do not  
27 take advantage of each other in a way that could not have been contemplated at the  
28

1 time the contract was drafted or do anything that will destroy the other party's right  
2 to receive the benefit of the contract.

3       86. Disputes involving the exercise of good faith arise when one party is  
4 given broad discretion in performing its obligations under the contract. Where a  
5 contract specifically vests one of the parties with broad discretion in performing a  
6 term of the contract, the covenant of good faith and fair dealing requires that the  
7 discretion be exercised reasonably and with proper motive, not arbitrarily,  
8 capriciously, or in a manner inconsistent with the reasonable expectations of the  
9 parties.  
10

11  
12       87. To the extent the Policy provides Defendant with discretion in  
13 calculating the ACV of an insured's total-loss vehicle, Defendant exercised its  
14 discretion unreasonably and in a manner that was arbitrary, capricious, and  
15 inconsistent with the reasonable expectations of the parties, specifically, to  
16 arbitrarily reduce the amount of their total-loss payments to insureds, by (i)  
17 excluding the vast majority of data in calculating and applying the PSA merely  
18 because the data showed that the PSA was illegitimate and contrary to the actual  
19 market reality; and (ii) making baseless assumptions that were always to the  
20 insured's detriment and its own benefit, i.e., that every vehicle sale for an amount  
21 equal to or more than list price is an outlier while every vehicle sale for an amount  
22 less than list price is because the consumer negotiated down a cash purchase price.  
23  
24  
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1           88. To the extent Defendant has discretion to apply a Projected Sold  
2 Adjustment to adjust the advertised price of a vehicle for sale, Defendant did not  
3 exercise that discretion in good faith because it always, uniformly, and without  
4 exception applied the adjustment to *decrease* the listed price and never to *increase*  
5 the listed price. Defendant never, for example, applies a Projected Sold Adjustment  
6 to increase a listed price where the vehicle is listed at a below market amount.  
7 Instead, irrespective of what the listed price is and how it compares to other listed  
8 prices, Defendant uniformly applied the PSA to reduce the listed price.  
9

10  
11           89. Defendant Progressive Northern breached the covenant of good faith  
12 and fair dealing by, *inter alia*:  
13

14           a) Intentionally inventing and applying Projected Sold Adjustments to  
15 undervalue comparable vehicles, and, in turn, insureds' total-loss vehicles;  
16

17           b) Failing to conduct *any* investigation or study or research into whether  
18 the Projected Sold Adjustment (i) reflects the used auto market, (ii) is based on  
19 accurate data or extrapolations, (iii) is consistent with accepted appraisal methods  
20 and practices, or (iv) has any justification whatsoever;  
21

22           c) Failing to pay insureds the ACV of their total-loss vehicles;  
23

24           d) Interpreting the terms and conditions of their insurance policies in an  
25 unreasonable manner solely in an effort to understate the value of total-loss vehicles  
26 and avoid paying insureds the ACV on their total-loss claims;  
27  
28

1 e) Inventing spurious grounds for undervaluing total loss claims that are  
2 hidden, not specific in dollar amount, not adequately explained, and unreasonable.

3 90. Defendant Progressive Northern's breaches of the covenant of good  
4 faith and fair dealing have caused damages to Plaintiff Wright and the Progressive  
5 Northern Class. Plaintiff Wright's and the Progressive Northern Class members'  
6 damages include the amounts improperly deducted by Defendant Progressive  
7 Northern from its payments to insureds on the basis of a Projected Sold Adjustment.  
8  
9

10 **COUNT V**

11 **DECLARATORY JUDGMENT**

12 (ON BEHALF OF PLAINTIFF PFAFF-HARRIS

13 AND THE PROGRESSIVE DIRECT CLASS)

14 91. Plaintiffs hereby repeat and reallege paragraphs 1-60.

15 92. This claim is brought by Plaintiff Pfaff-Harris on behalf of the  
16 Progressive Direct Class.

17 93. A judicable dispute between Plaintiff Pfaff-Harris and the proposed  
18 Progressive Direct Class and the Defendant Progressive Direct is before this Court  
19 under 28 U.S.C. § 2201, *et seq.*, concerning the construction of the auto insurance  
20 policies issued by Defendant Progressive Direct and the rights arising under those  
21 policies.

22 94. Plaintiff Pfaff-Harris, for herself and on behalf of the Progressive  
23 Direct Class, seeks a declaration of rights and liabilities of the parties herein.  
24  
25  
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1 Specifically, Plaintiff Pfaff-Harris is seeking a declaration that in paying total loss  
2 claims with first-party insureds, it is a breach of the insurance contract with  
3 Progressive Direct for Progressive Direct to base the valuation and payment of  
4 claims on values of comparable vehicles that have been reduced by factually  
5 erroneous Projected Sold Adjustments.  
6

7 95. Progressive Direct's unlawful common policy and general business  
8 practice of applying Projected Sold Adjustments is ongoing. Accordingly,  
9 Progressive Direct has breached, and continues to breach, the express terms of its  
10 contracts of insurance with Plaintiff Pfaff-Harris and members of the Progressive  
11 Direct Class requiring it to settle total loss claims on the basis of the total loss  
12 vehicle's ACV.  
13

14 96. As a result of these breaches of contract, Plaintiff Pfaff-Harris and the  
15 proposed Progressive Direct Class members have been injured. Plaintiff Pfaff-  
16 Harris' and proposed Progressive Direct Class members' damages include the  
17 amounts illegally deducted by Progressive Direct from the insureds' payments.  
18

19 97. Plaintiff Pfaff-Harris seeks a declaration that Progressive Direct's  
20 application of unfounded Projected Sold Adjustments results in a valuation of less  
21 than the ACV Progressive Direct is required under its insurance contracts to pay  
22 insureds.  
23  
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**COUNT VI**

**DECLARATORY JUDGMENT**

(ON BEHALF OF PLAINTIFF WRIGHT

AND THE PROGRESSIVE NORTHERN CLASS)

98. Plaintiffs hereby repeat and reallege paragraphs 1-60.

99. This claim is brought by Plaintiff Wright on behalf of the Progressive Northern Class.

100. A judiciable dispute between Plaintiff Wright and the proposed Progressive Northern Class and the Defendant Progressive Northern is before this Court under 28 U.S.C. § 2201, *et seq.*, concerning the construction of the auto insurance policies issued by Defendant Progressive Northern and the rights arising under those policies.

101. Plaintiff Wright, for himself and on behalf of the Progressive Northern Class, seeks a declaration of rights and liabilities of the parties herein. Specifically, Plaintiff Wright is seeking a declaration that in paying total loss claims with first-party insureds, it is a breach of the insurance contract with Progressive Northern for Progressive Northern to base the valuation and payment of claims on values of comparable vehicles that have been reduced by factually erroneous Projected Sold Adjustments.

102. Progressive Northern's unlawful common policy and general business practice of applying Projected Sold Adjustments is ongoing. Accordingly,

1 Progressive Northern has breached, and continues to breach, the express terms of its  
2 contracts of insurance with Plaintiff Wright and members of the Progressive  
3 Northern Class requiring it to settle total loss claims on the basis of the total loss  
4 vehicle's ACV.  
5

6 103. As a result of these breaches of contract, Plaintiff Wright and the  
7 proposed Progressive Northern Class members have been injured. Plaintiff Wright's  
8 and proposed Progressive Northern Class members' damages include the amounts  
9 illegally deducted by Progressive Northern from the insureds' payments.  
10

11 104. Plaintiff Wright seeks a declaration that Progressive Northern's  
12 application of unfounded Projected Sold Adjustments results in a valuation of less  
13 than the ACV Progressive Northern is required under its insurance contracts to pay  
14 insureds.  
15  
16

### 17 PRAYER FOR RELIEF

18 WHEREFORE, Plaintiffs, individually and on behalf of all others similarly  
19 situated, respectfully request that this Court:  
20

- 21 a) determine that this action may be maintained as a class action under  
22 Federal Rule of Civil Procedure 23, certify the proposed Classes for  
23 class treatment, appoint Plaintiffs as class representatives for the  
24 Classes, and appoint undersigned counsel as Class Counsel;  
25  
26 b) enter an order finding that Defendants' actions described herein  
27 constitute breaches of the express terms of their policies of insurance;  
28



- c) enter an order finding that Defendants' conduct constitutes a breach of the covenant of good faith and fair dealing;
- d) award Plaintiffs and members of the Classes actual damages according to proof;
- e) enter a declaratory judgment that in paying total loss claims with first-party insureds, it is a breach of the insurance contract with Defendants for Defendants to base the valuation and payment of claims on values of comparable vehicles that have been reduced by Projected Sold Adjustments;
- f) enter further belief based on the declaratory judgment including an order enjoining Defendants from basing the valuation and payment of claims on values of comparable vehicles that have been reduced by Projected Sold Adjustments;
- g) award pre-judgment and post-judgment interest at the maximum rate permitted by applicable law;
- h) award reasonable attorney's fees and litigation costs and expenses pursuant to applicable law; and
- i) grant any such other legal and equitable relief as the Court may deem appropriate, including specific performance as an alternative to damages.

**DEMAND FOR JURY TRIAL**

Plaintiffs, on behalf of themselves and the putative classes, hereby demand a trial by jury pursuant on all issues so triable.

DATED this 12th day of April 2024.

Respectfully submitted,

By: /s/ Gregg A. Hubley

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